

ADR**E-FILING**

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2007 SEP 25 A 10:04

RICHARD W. WICKING
CLERK

U.S. DISTRICT COURT

5 Attorneys for Plaintiff, MORELLI TAYLOR SPORTFISHING & MARINE
 6 SUPPLY, LLC, a California Limited Liability Company d.b.a. LEO'S
 7 SPORTFISHING

8
 9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA

11 MORELLI TAYLOR SPORTFISHING)
 12 & MARINE SUPPLY, LLC, a)
 13 California Limited Liability)
 14 Company d.b.a. LEO'S)
 15 SPORTFISHING,)
 16 Plaintiff,)
 17 vs.)
 18 DAN ROBIN CATALANO, an)
 19 individual, in personam;)
 20 Unnamed Sailing Vessel,)
 21 Hull #CFZ0237TC700 &)
 22 CF #0237TP, in rem, and)
 23 DOES 1-100, inclusive,)
 24 Defendants.)
 25
 26

CASE NO:

C 07 04947 HRLVERIFIED COMPLAINT FOR BREACH
OF ORAL CONTRACT, BREACH OF
IMPLIED CONTRACT, QUANTUM
MERUIT, ACCOUNT STATED

46 CFR § 67.250 et seq.

GENERAL ALLEGATIONS

27 1. The plaintiff, MORELLI TAYLOR SPORTFISHING & MARINE
 28 SUPPLY, LLC, a California Limited Liability Company d.b.a. LEO'S
 29 SPORTFISHING ("LEO'S"), at all times relevant, was a marine
 30 supply and service company, doing substantial business in Santa
 31 Cruz, California.

27 2. LEO'S is informed and believes, and on that basis
 28 alleges, that DAN ROBIN CATALANO ("CATALANO"), is the registered

1 owner of a sailing vessel, hull identification #CFZ0237TC700, CF
2 #0237TP ("the Vessel").

3 3. The Vessel is now, or during the pendency of this action
4 will be, within this district and the jurisdiction of this court.

5 4. Defendant CATALANO is liable in personam and the Vessel
6 is liable in rem to LEO'S for its damages resulting from the
7 incident described herein.

8 5. In doing the things complained of herein, each of the
9 Defendants, named or fictitious, was acting as the agent,
10 servant, joint venturer or employee of each of the remaining
11 Defendants.

12 6. The acts and omissions alleged herein occurred in Santa
13 Cruz County, California and the contracts alleged herein occurred
14 in Santa Cruz County, California.

15

16 **FIRST CAUSE OF ACTION, BREACH OF ORAL CONTRACT**

17 7. LEO'S realleges the allegations set forth in GENERAL
18 ALLEGATIONS.

19 8. On or about May 9, 2007, LEO'S and CATALANO entered into
20 an oral contract ("the Agreement") whereby LEO'S was to perform
21 certain marine maintenance and restoration services on the
22 Vessel.

23 9. LEO'S performed all acts on its part to be performed
24 under the Agreement.

25 10. CATALANO breached the Agreement by failing to pay to
26 LEO'S \$60,779.03, or any other amount, for LEO's services for
27 CATALANO. A true and correct copy of the invoice and billing
28 history is attached as Exhibit 1.

1 **SECOND CAUSE OF ACTION, QUANTUM MERUIT**

2 11. LEO'S realleges the above paragraphs.

3 12. LEO'S performed marine maintenance and restoration
4 services for CATALANO at CATALANO's specific request.

5 13. CATALANO promised to pay for the above mentioned
6 services.

7 14. Despite demand, CATALANO has failed to pay and refuses
8 to pay LEO'S for the reasonable value of LEO'S services in the
9 amount of \$60,779.03, or any other amount, in an amount to be
10 proven at trial.

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12 **THIRD CAUSE OF ACTION, ACCOUNT STATED**

13 15. LEO'S realleges the allegations above.

14 16. Between September 1, 2007, and September 24, 2007, and
15 in Santa Cruz County, an account was stated by and between LEO'S
16 and CATALANO by which a balance, in the amount of \$60,779.03,
17 was agreed by CATALANO to be due LEO'S, all according to proof.

18

19 **PRAYER**

20 WHEREFORE, LEO'S prays for judgment against Defendants as
21 follows:

22 1. That the Vessel, her tackle, etc. is attached, and the
23 Vessel may be condemned and sold to pay the demands of Plaintiff.

24 2. Damages for breach of contract according to proof,
25 approximately \$60,779.03 plus interest at 10% per annum;

26 3. Costs of the suit incurred herein; and

27 4. For such other relief as the court deems just and proper.

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1 DATED: September 25, 2007

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3 Joseph W. McCarthy, Attorney for
4 Plaintiff MORELLI TAYLOR
SPORTFISHING & MARINE SUPPLY, LLC,
a California Limited Liability
Company d.b.a. LEO'S SPORTFISHING

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1 VERIFICATION

2 I, Leonardo Morelli, managing member of MORELLI TAYLOR
3 SPORTFISHING & MARINE SUPPLY, LLC, a California Limited Liability
4 Company d.b.a. LEO'S SPORTFISHING, am a Plaintiff in the above-
5 entitled action. I have read the foregoing Complaint and know
6 the contents thereof. The same is true of my own knowledge,
7 except as to those matters which are therein alleged on
8 information and belief, and, as to those matters, I believe them
9 to be true.

10 I declare under penalty of perjury under the laws of the
11 State of California that the foregoing is true and correct.

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13 Dated: September 25, 2007

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Leonardo Morelli,
Managing Member
MORELLI TAYLOR SPORTFISHING &
MARINE SUPPLY, LLC, a
California Limited Liability
Company d.b.a. LEO'S
SPORTFISHING

Exhibit 1

Sept 1, 2007

Dan Catalono
Santa Cruz Harbor

Dan,

Attached is the invoice for the work performed on the boat the Buccaneer. I have separated the materials and labor. I would appreciate your prompt payment On this matter. The work started back in May and continued for several Months. I see you are having more work done now, so I can assume you have The money to pay me.

After all I'm a lien holder on your title and we have a business plan and a memorandum of intent signed. Based on our agreement, I have done everything I promised to do, so Now it is your turn to do the right thing. The store, Diane and everyone else Involved has worked very hard to promote this new adventure. So now it Is your turn, pay your bill.

If you have questions you may call me.



Leo Morelli
476-2648

speedimemo.

carbonless

191592
TRIP

LEOS SPORTFISHING
2210 E CLIFF DR
SC CA 95062

TO DAN ATALONO
SUBJECT

AT SANTA CRUZ Harbor

LABOR/materials FOR Worked Performed

DATE 9/1/07

* TOTAL materials \$ 26,779.

LABOR \$ 34 000

\$ 60,779.03 TOTAL DUE NOW

SEE ATTACHED DOCUMENTS

PLEASE REPLY TO

SIGNED

 Leo Morelli

DATE

SIGNED

REDFORM 45 469

POLY PAK (50 Sets) 4P 469

SEND PARTS 1 AND 3 INTACT.
PART 3 WILL BE RETURNED WITH REPLY.

DETACH AND FILE FOR FOLLOW-UP

BUCCANEER EXPENSES

<u>Date</u>	<u>To</u>	<u>Description</u>	<u>Cost</u>
5/9/2007	OSH	Building Supplies	\$ 72.48
5/9/2007	West Marine		\$ 20.76
5/14/2007	West Marine		\$ 150.31
5/14/2007	West Marine		\$ 262.74
5/15/2007	West Marine		\$ 223.35
5/16/2007	Big Creek	Building Supplies	\$ 96.34
5/16/2007	Gravelles		\$ 421.68
5/17/2007	West Marine		\$ 207.17
5/23/2007	Fiberglass Hawaii	Boat Repairs	\$ 56.04
5/23/2007	OSH	Building Supplies	\$ 78.96
5/23/2007	West Marine		\$ 30.71
5/23/2007	West Marine		\$ 133.77
5/23/2007	West Marine		\$ 421.10
5/27/2007	OSH	Gas Can (7)	\$ 151.47
5/29/2007	Santa Cruz Paint	Boat Repairs	\$ 82.73
6/1/2007	West Marine		\$ 168.51
6/4/2007	Dan Catalano		\$ 515.00
6/4/2007	Fiberglass Hawaii		\$ 210.32
6/5/2007	OSH		\$ 132.34
6/5/2007	OSH	Cooper Lug, spades etc.	\$ 231.09
6/6/2007	West Marine		\$ 10.99
6/7/2007	Moore & Sons		\$ 200.00
6/8/2007	OSH	Wet/dry vacs, rivets, solder, gun et.	\$ 112.66
6/8/2007	West Marine		\$ 126.40
6/10/2007	OSH	Solder, cold heat	\$ 28.17
6/12/2007	Fastenal		\$ 96.36
6/12/2007	West Marine		\$ 226.27
6/13/2007	OSH		\$ 66.12
6/15/2007	OSH		\$ 65.39
6/18/2007	Chemtrec	Electrode, Zip Wheel etc.	\$ 64.33
6/18/2007	Leo's Sport Fishing	Gas	\$ 790.31
6/18/2007	Sears		\$ 143.42
6/21/2007	Surplus Eagle		\$ 345.24
6/22/2007	Hose Shop		\$ 191.43
6/22/2007	Lumbermens	Torx, pipe hanger, conduit etc.	\$ 284.84
6/25/2007	OSH		\$ 48.13
6/25/2007	West Marine		\$ 53.28
6/25/2007	West Marine		\$ 203.36
6/27/2007	Lumbermens		\$ 160.23
6/29/2007	OSH		\$ 63.61
6/30/2007	Lumbermens	Parts etc.	\$ 163.83
7/2/2007	Surplus Eagle		\$ 420.28
7/5/2007	OSH		\$ 244.53

7/9/2007 Kelly Moore	Boat Repairs	\$ 158.55
7/10/2007 Sears		\$ 27.05
7/10/2007 Surplus Eagle		\$ 242.94
7/12/2007 West Marine		\$ 362.50
7/13/2007 Central Welders	Boat Repairs	\$ 154.34
7/16/2007 Aquarias Boat Works	Impeller, corrosion X	\$ 195.75
7/16/2007 Port Supply	Parts etc.	\$ 279.52
7/16/2007 West Marine		\$ 160.11
7/16/2007 West Marine		\$ 392.17
7/18/2007 OSH	Eyebolts	\$ 128.34
7/20/2007 Sears	Tools	\$ 411.20
7/20/2007 West Marine		\$ 91.45
7/22/2007 Monterey Bay Marine		\$ 359.15
7/22/2007 Port Supply	Cables	\$ 55.26
7/23/2007 Port Supply	Thimble	\$ 144.93
7/23/2007 West Marine		\$ 795.13
7/25/2007 Santa Cruz Harbor	Slip Fees	\$ 1,890.00
8/8/2007 Lumbermens	Tools etc.	\$ 206.26
8/9/2007 OSH	washers, hand cleaner, bolts etc.	\$ 23.52
8/24/2007 Lumbermens		\$ 459.17
8/27/2007 West Marine		\$ 821.71
Scott MacKenzie Bail Bonds	Bail Bond	\$ 575.00
	LABOR: 400 hours @ \$85/hr.	\$ 34,000.00
	Carries metal FCB	3200.35
		\$ 49,710.10

52,910.45
 - 300.70
 - 144.84
 - 28.17
 - 500.00

 53,884.16

5000.00

#95.65
 313.90
 404.47
 852.95
 164.12
 9.915
 53.83

60,779.03

TONY (Vessel)
 ASSIST
 Dep ON LABOR
 when masts were put up Boat
 was tied up on fuel dock.
 Lost revenue for 2 days